



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R08-RCRA-2011-0823; FRL-9640-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (“EPA,” “the Agency” or “we” in this preamble) today is granting a petition submitted by the ConocoPhillips Billings, Montana Refinery (“ConocoPhillips”, “Refinery” or “Petitioner”) to exclude or “delist,” from the list of hazardous wastes, a maximum of 200 cubic yards per year of residual solids from sludge removed from two storm water tanks at its Billings, Montana refinery and processed in accordance with the petition.

After careful analysis we have concluded that the petitioned waste is not a hazardous waste. This exclusion conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when processed in accordance with the petition and disposed in a Subtitle D landfill permitted, licensed, or otherwise authorized by a State to accept the delisted processed storm water tank sludge. This rule also imposes testing conditions for future processed storm water tank residuals to ensure they continue to qualify for delisting.

DATES: This final rule is effective on (*insert Federal Register publication date*).

ADDRESSES: EPA has established a docket for this action under Docket ID No.: EPA–R08–RCRA–2011–0823. All documents in the docket are listed on the <http://www.regulations.gov> web site or in hard copy at the Environmental Protection Agency Region VIII, Office of Partnerships and Regulatory Assistance, Solid & Hazardous Waste Program, Mail Code: 8P-HW, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The docket is available for viewing from 8am to 3pm, Monday through Friday excluding Federal holidays. You may copy material from any regulatory docket at a cost of \$0.15 per page. EPA requests that you contact the person listed in the **For Further Information Contact** section to schedule your inspection. You should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, 1595 Wynkoop Street, Mail Code 8P-HW, Denver, Colorado 80202, (303) 312-6231, cosentini.christina@epa.gov.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

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I. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which the EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity and must present sufficient information for the EPA to decide whether any factors, in addition to those for which the waste was listed, warrant retaining it as a hazardous waste. (*See* 40 CFR 260.22; 42 U.S.C. 6921(f).)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that future generated waste remains nonhazardous based on hazardous waste characteristics and to ensure that future generated wastes meet the conditions set forth in this final rule.

B. What regulations allow a waste to be delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their waste from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of 40 CFR. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste from the lists of hazardous wastes on a “generator-specific” basis.

II. ConocoPhillips Petition

A. What waste did ConocoPhillips petition to delist?

On December 3, 2010, ConocoPhillips petitioned the EPA to exclude a maximum annual volume of 200 cubic yards of F037 residual solids from processing (for oil recovery) sludge removed from two storm water tanks at the Billings, Montana refinery, from the lists of hazardous waste contained in 40 CFR 261.31, because it believed that the petitioned wastes did not meet any of the criteria for which the waste was listed and there were no additional constituents or factors that would cause the waste to be hazardous. ConocoPhillips generates the waste through periodically removing and processing sludge accumulated in two storm water tanks through oil recovery and dewatering. The sludge is not accumulated at a constant rate and is currently removed from the tanks at approximately 18 month intervals and processed via centrifuge and/or filter press for oil recovery and dewatering. Recovered oil is reinserted into the refining process and water from dewatering is routed to the Refinery's on-site wastewater treatment plant.

B. What information was submitted in support of this petition?

ConocoPhillips submitted detailed descriptions of the process generating the waste and other information regarding the makeup of materials contributing to the sludge. ConocoPhillips asserted that the waste does not meet the criteria for the F037 waste code listing and that there are no other factors that might cause the waste to be hazardous.

To support its assertion that the waste is not hazardous, ConocoPhillips collected samples of the waste for analysis. Sample collection and chemical analysis were conducted in accordance with a pre-approved sampling and analysis plan. Details of the sampling and analysis plan and the analytical results are contained in the docket for the December 8, 2011 proposed rule.

III. EPA's Evaluation and Final Decision

A. What decision is EPA finalizing and why?

Today the EPA is finalizing an exclusion for up to 200 cubic yards of residual solids, generated annually, from processing (for oil recovery) sludge removed from two storm water tanks at the ConocoPhillips Billings, Montana Refinery from the lists of hazardous waste contained in 40 CFR 261.31. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See § 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4).

On December 8, 2011, the EPA proposed to exclude or delist the storm water tank process residual generated at the ConocoPhillips Billings, Montana Refinery from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (76 FR 76677). No public comments were received, and for reasons stated in both the proposed rule and this document, we believe that the storm water tank process residual from the ConocoPhillips Billings, Montana Refinery should be excluded from hazardous waste control.

B. What are the terms of this exclusion?

This exclusion applies only to a maximum annual generation of 200 cubic yards of process residual from treatment of sludge in two storm water tanks at the ConocoPhillips Billings, Montana Refinery. This exclusion is effective only if the storm water sludge is processed in accordance with this rule, and the accompanying petition, and if all conditions contained in this rule are satisfied. ConocoPhillips must dispose of this waste in a Subtitle D landfill permitted, licensed or regulated by the State of Montana, or other state subject to Federal RCRA delisting, to accept the delisted processed storm water tank sludge. ConocoPhillips must verify prior to disposal that the constituent concentrations in the residual solids do not exceed the allowable levels set forth in this exclusion.

C. When is the delisting effective?

This rule is effective (*insert Federal Register publication date*). The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How does this action affect states?

Because the EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states who have received authorization from the EPA to make their own delisting decisions.

The EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than the EPA's, under RCRA 3009, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a federally-issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, the EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under applicable state law. Delisting petitions approved by the EPA Administrator or his delegate pursuant to 40 CFR 260.22 are effective in the State of Montana after the final rule has been published in the Federal Register.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, Oct. 4, 1993) this rule is not of general applicability and, therefore, is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44

U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism", (64 FR 43255, Aug. 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will apply to a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," (65 FR 67249, Nov. 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," (62 FR. 19885, Apr. 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order

12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform", (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: RCRA 3001(f), 42 U.S.C. 6921(f).

James B. Martin
Regional Administrator
Region 8

Dated: February 14, 2012.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

Part 261-IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX to part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * * ConocoPhillips Billings Refinery	* * Billings, Montana	* * Residual solids from centrifuge and/or filter press processing of storm water tank sludge (F037) generated at a maximum annual rate of 200 cubic yards per year must be disposed in a lined Subtitle D landfill, licensed, permitted or otherwise authorized by a state to accept the delisted processed storm water tank sludge. The exclusion becomes effective (<i>insert Federal Register publication date</i>).
		For the exclusion to be valid, the ConocoPhillips Billings Refinery must implement a verification testing program that meets the following Paragraphs:
		<p>1. <i>Delisting levels:</i> The constituent concentrations in a leachate extract of the waste measured in any sample must not exceed the following concentrations (mg/L TCLP): Acenaphthene-37.9; Antimony-.97; Anthracene-50; Arsenic-.301; Barium-100; Benz(a)anthracene-.25; Benzene-.5; Benzo(a)pyrene-1.1; Benzo(b)fluoranthene-8.7; Benzo(k) fluoranthene-50; Bis(2-ethylhexyl)phthalate -50; 2-Butanone -50; Cadmium-1.0; Carbon disulfide-36; Chromium- 5.0; Chrysene-25.0; Cobalt-.763; Cyanide(total)-41.2; Dibenz(a,h)anthracene-1.16; Di-n-octyl phthalate-50; 1,4-Dioxane -36.5; Ethylbenzene-12; Fluoranthene - 8.78; Fluorene-17.5; Indeno(1,2,3-cd)pyrene-27.3; Lead-5.0; Mercury-.2; m&p -Cresol-10.3; Naphthalene-1.17; Nickel-48.2; o-Cresol-50; Phenanthrene-50; Phenol-50; Pyrene-15.9; Selenium - 1.0; Silver-5.0; Tetrachloroethene-0.7; Toluene-26; Trichloroethene -.403; Vanadium-12.3; Xylenes (total)-22; Zinc-500.</p> <p>2. <i>Verification Testing:</i> To verify that the waste does not exceed the specified delisting levels, ConocoPhillips must collect and analyze two composite samples of the residual solids from the processed sludge to account for potential variability in each tank. Composite samples must be collected each time cleanout occurs and residuals</p>

		<p>are generated. Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. If oil and grease comprise less than 1 percent of the waste, SW-846 Method 1311 must be used for generation of the leachate extract used in the testing for constituents of concern listed above. SW-846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1 percent or more of the waste. SW-846 Method 9071B must be used for determination of oil and grease. SW-846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11. As applicable, the SW-846 methods might include Methods 1311, 3010, 3510, 6010, 6020, 7470, 7471, 8260, 8270, 9014, 9034, 9213, and 9215. If leachate concentrations measured in samples do not exceed the levels set forth in paragraph 1, ConocoPhillips can dispose of the processed sludge in a lined Subtitle D landfill which is permitted, licensed, or registered by the state of Montana or other state which is subject to Federal RCRA delisting. If constituent levels in any sample and any retest sample for any constituent exceed the delisting levels set in paragraph (1) ConocoPhillips must do the following:</p> <p>(A) Notify the EPA in accordance with paragraph (5) and;</p> <p>(B) Manage and dispose of the process residual solids as F037 hazardous waste generated under Subtitle C of RCRA.</p> <p>3. <i>Changes in Operating Conditions:</i> ConocoPhillips must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. ConocoPhillips must handle wastes generated after the process change as hazardous until it has: demonstrated that the wastes continue to meet the delisting concentrations in paragraph (1); demonstrated that no new hazardous constituents listed in appendix VIII of part 261 have been introduced; and it has received written approval from the EPA.</p> <p>4. <i>Data Submittal:</i> Whenever tank cleanout is conducted ConocoPhillips must verify that the residual solids from the processed storm water tank sludge meet the delisting levels in 40 CFR 261 Appendix IX Table 1, as amended by this notice. ConocoPhillips must submit the verification data to U.S. EPA Region 8, 1595 Wynkoop Street, RCRA Delisting Program, Mail code 8P-HW, Denver, CO 80202. ConocoPhillips must compile, summarize and maintain onsite records of tank cleanout and process operating conditions and analytical data for a period of five years.</p> <p>5. <i>Reopener Language:</i> (A) If, anytime after final approval of this exclusion, ConocoPhillips possesses or is otherwise made aware of any environmental data (including but not limited to leachate data</p>
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<p>* * *</p>	<p>* *</p>	<p>or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the EPA in granting the petition, then the facility must report the data, in writing to the EPA at the address above, within 10 days of first possessing or being made aware of that data.</p> <p>(B) If ConocoPhillips fails to submit the information described in paragraph (A) or if any other information is received from any source, the EPA will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</p> <p>(C) If the EPA determines that the reported information requires the EPA action, the EPA will notify the facility in writing of the actions the agency believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed the EPA action is not necessary. The facility shall have 30 days from the date of the notice to present such information.</p> <p>(D) If after 30 days ConocoPhillips presents no further information or after a review of any submitted information, the EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the EPAs determination shall become effective immediately, unless the EPA provides otherwise.</p> <p>(E) Notification Requirements: ConocoPhillips must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.</p> <p>(1) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.</p> <p>(2) Update the onetime written notification, if it ships the delisted waste to a different disposal facility.</p> <p>(3) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.</p> <p>* *</p>
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